

Kyrgyzstan:

Law on Pledge and Mortgage. In January 2005, Parliament adopted the draft Law on Pledge and Mortgage that was developed in an effort led by USAID's commercial law project. The new law is modern in approach, incorporating internationally recognized best practices for the liquidation of collateral through non-judicial foreclosure proceedings, a key provision of the draft of the law prepared by USAID's experts.

The chief barrier to the development of a vibrant mortgage market in Kyrgyzstan is the extremely high cost, in terms of expenditures of both time (more than two years through the courts), and money (on average 140% of the value of a claim), necessary to liquidate collateral in the event of default. These circumstances result in credit rationing (typically mortgage amounts are capped at half the value of the mortgaged property), which is necessary to reduce risk, combined with very high interest rates (average 22%), which are necessary to recoup costs. The new law circumvents this barrier by providing for speedy, neutrally administered and fair liquidation procedures, which should result in increased access to, and lower costs for, credit.

Initially, Parliamentarians gutted the modern provisions and produced a non-market friendly law. USAID's commercial law project took a leading role in the ensuing effort with other donor and private sector interests to prepare a letter to the President urging him to veto the bill. After further lobbying, the President did so, recommending adoption of the law in the form originally proposed by USAID.

Judicial Opinion Database. In March 2004, a Memorandum of Understanding was signed between USAID and the Kyrgyzstan Supreme Court, providing for cooperation in several areas, including the establishment of a database of judicial opinions. Since the MOU was signed, 10 pilot courts have participated in the judicial opinion database (JODB) project and, during the period from May through December 2004, USAID's commercial law project received a total of 4,639 judicial opinions. This pace exceeds that of the JODB developed with the former commercial court system, where approximately 12,000 opinions were received over a period of nearly three years. The Supreme Court has subsequently agreed to expand the JODB program to an additional 16 courts. Participation by the courts in the JODB represents an unprecedented step towards openness and accountability for the Kyrgyzstani judicial system.

In addition, the courts are providing an ever-increasing number of their opinions in electronic form. Of the total of 4,639 opinions that our commercial law project had received by the end of 2004, 3,098 of them (67%) were provided by the courts in electronic form. This not only decreases the amount of time and effort involved in incorporating the opinions into the database – it also marks the beginning of the adoption of modern methods of information management within the courts.